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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,405	08/19/2003	Robert H. Haber	21542-092501	7916

7590

07/28/2004

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EXAMINER

ALEXANDER, REGINALD

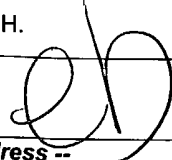
ART UNIT

PAPER NUMBER

1761

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/644,405	HABER, ROBERT H.	
	Examiner	Art Unit	
	Reginald L. Alexander	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27 and 28 is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-12, 19-22 and 24 is/are rejected.
- 7) ☒ Claim(s) 5-8, 13-18, 23, 25 and 26 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the bar recited in claims 14 and 15 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Macasaet.

There is disclosed in Macasaet a baking assembly comprising: a first heating element 24 including a reservoir 36 for receiving the batter and the food item therein, the reservoir defining a longitudinal axis; a second heating element 22 including a cavity 36 complementing the reservoir; a hinge 28 securing the first heating element to the second heating element; a stick retainer 38 for receiving and retaining a stick 12 in an orientation such that the food item is coaxial with the reservoir, the stick having a handle portion which extends outward of the heating elements a food receiving portion which is enclosed between the heating elements and a receiving portion which is received by the stick retainer.

Claims 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Clark.

There is disclosed in Clark a baking assembly, comprising: a first heating element 18 including a plurality of reservoirs, each of the reservoirs including a primary reservoir 32 and a secondary reservoir 40; a second heating element 16 including a plurality of cavities 30 complementing the plurality of reservoirs, and a plurality of

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extensions 42 complementing the secondary reservoirs; and a hinge 20 securing the two heating elements.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Macasaet in view of Merritt.

Merritt discloses in a baking assembly, a stick retainer including a mounting frame 25, 26 for securing a stick to a first heating element and a rotating mechanism 22 for rotating the stick and food item secured thereto about a longitudinal axis.

It would have been obvious to one skilled in the art to substitute the stick retainer of Macasaet with that disclosed in Merritt, in order to allow rotation of the stick and food item without removal from the cooking assembly.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark in view of Macasaet.

Clark, as discussed above, discloses all of the claimed subject matter except for sticks mounted within channels provided between the heating elements that allow for cooking food items on the sticks.

Macasaet, as discussed above, discloses sticks and channels in association with a baking assembly. It would have been obvious to one skilled in the art to provide the

device of Clark with the channels and sticks disclosed in Macasaet, in order to cook food items on a stick.

Claims 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Macasaet in view of Weigle.

Weigle discloses the use of a base 38 including a pivot for supporting first and second heating elements, wherein the heating elements in a loading position are parallel to the base and in a baking position are perpendicular to the base.

It would have been obvious to one skilled in the art to provide the baking assembly of Macasaet with the base and pivot connection disclosed in Weigle, in order to allow pivoting of the heating elements for cooking.

Allowable Subject Matter

Claims 5-8, 13-18, 23, 25 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 27 and 28 are allowed.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Simmons, Berke et al. and Sohn are cited for their disclosure of the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

rla
July 26, 2004


Reginald L. Alexander
Primary Examiner
Art Unit 1761